

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 316 – HB 421

April 1, 2017

**SUMMARY OF ORIGINAL BILL:** Creates the Asset Forfeiture and Disposition of Seized Property Act (the Act) to apply to all seizures and forfeitures occurring after July 1, 2017. The Act is intended to transition Tennessee from a civil forfeiture procedure to a criminal forfeiture procedure.

The Act authorizes the forfeiture of a person's property if (1) the person was arrested for an offense to which forfeiture applies, (2) the person is convicted in a court of competent jurisdiction of a criminal offense for which forfeiture is applicable, and (3) the state establishes by clear and convincing evidence that the property is subject to forfeiture.

The Act authorizes a court to order a person to forfeit property acquired through commission of an offense, property directly traceable to property acquired through the commission of an offense, and any instrumentality the person used in the commission of an offense.

The Act authorizes law enforcement agencies to seize property subject to forfeiture prior to a conviction, but the property must be held until a forfeiture proceeding has been conducted. Forfeiture proceedings are ancillary to criminal prosecutions and do not begin until the criminal prosecution has concluded.

The Act establishes procedures for a person to protest the forfeiture.

The Act requires all forfeited currency, all sale proceeds from the sale of forfeited or abandoned property, and all proceeds from the sale of forfeited property received by the state from another jurisdiction to be deposited in the Asset Forfeiture Trust Fund, which is created within the Office of the State Treasurer.

The Act prohibits a law enforcement agency from directly or indirectly transferring seized property to a federal law enforcement authority or other federal agency unless the value of the seized property exceeds \$50,000, the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property, or the seized property may only be forfeited under federal law.

The Act requires all proceeds returned to a law enforcement agency by the United States Attorney General through the Department of Justice's Asset Forfeiture Program to be deposited into the Asset Forfeiture Trust Fund.

## FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – \$1,872,300/State Law Enforcement Agencies  
\$539,800/Division of Administrative Procedures

Increase State Revenue – \$748,900/Asset Forfeiture Trust Fund

Decrease State Expenditures – \$539,800/Secretary of State

Decrease Local Revenue – \$3,757,200

**SUMMARY OF AMENDMENT (006401):** Deletes and rewrites the proposed legislation. Requires the seizing law enforcement officer, where the owner of the property was not present at the seizure, to mail a Notice of Forfeiture Warrant Hearing to the owner within five days of the seizure. Authorizes the owner of the property to be present at the probable cause hearing regarding the property.

Requires the seizing agency to send any forensic chemistry report on drugs or drug analogues to the applicable agency within five days. If the report is negative for drug residue on the property, then the applicable agency has five business days to submit an order dismissing the forfeiture action. The seizing agency must make the property available to the owner within five days of receiving the order to dismiss.

Creates a rebuttable presumption that currency seized is not subject to forfeiture absent evidence to the contrary.

Authorizes an administrative law judge to order attorney's fees to the owner who has the property returned by order of the administrative law judge.

Prohibits a magistrate or judicial commissioner from issuing a forfeiture warrant.

## FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Other Fiscal Impact – To the extent the proposed legislation results in property owners being awarded attorney's fees, the proposed legislation will result in an increase in state expenditures and a mandatory increase in local expenditures.\* However, due to multiple unknown factors, the extent and timing of any such impacts cannot reasonably be determined.**

Assumptions for the bill as amended:

- The new procedures proposed—authorizing a property owner to attend a probable cause hearing, requiring notice to be sent to the owner, creating a rebuttable presumption, etc.— will not significantly impact forfeiture actions.

- Authorizing an administrative law judge to award for attorney's fees, however, could result in an increase state expenditures and/or a mandatory increase in local expenditures, if owners' properties are regularly returned by the order of the administrative law judge.
- However, due to multiple unknown factors, including but not limited to, the number of cases in which property will be returned, whether seizing agencies are state or local law enforcement agencies, and the average amount of attorney's fees likely to be awarded; the fiscal impact cannot be determined.
- Limiting the officials that can issue forfeiture warrants will not significantly impact court operations.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm